

# REMARKS

In light of the following remarks and foregoing amendments, applicants respectfully submit that the above-identified application is in condition for allowance. Reconsideration and withdrawal of the claim rejections and allowance of claims 1-4, 9-15 and 17-20 are hereby respectfully solicited. Because claims 5-8 and 16 depend from an allowable generic base claim, applicants also solicit reinstatement and allowance of these withdrawn claims.

## I. CLAIMS REJECTED UNDER 35 U.S.C. §102(b)

Claims 1, 3, 9, 10 and 12 recite, *inter alia*, a dish drainer and tray set including at least one compartment formed contiguous with the perimeter wall and extending within the interior. The compartment formed to provide an integral holder for cooking utensils, silverware and the like attached to the periphery of the dish drainer. See page 6, lines 26-27.

Halvorsen does not recite a dish drainer and tray set including at least one compartment formed contiguous with the perimeter wall and extending within the interior. Halvorsen simply discloses a combined dish drainer and colander B including an annular stand A having a plurality of legs *a* and an annular seat *a'*. Halvorsen does not suggest or disclose, in any way, forming at least one compartment contiguous with the perimeter and extending within the interior.

Because Halvorsen does not contain each and every element set forth in claims 1, 3, 9, 10 and 12, either expressly or inherently, these claims cannot be anticipated<sup>1</sup> nor rendered obvious<sup>2</sup> thereby. These

<sup>1</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. §102 rejection. See MPEP § 2131.01.

claims are therefore in condition for allowance, and withdrawal of the rejection is respectfully requested.

**II. CLAIMS REJECTED UNDER 35 U.S.C. §103(a)**

**A. Claims 2, 4, and 11**

5           Claims 2, 4 and 11 have been rejected under 35 U.S.C. §103(a) as obvious over Halvorsen alone. Applicants respectfully traverse the rejection based on the following grounds.

10           Claims 2, 4 and 11 recite, *inter alia*, a dish drainer and tray set including at least one compartment formed contiguous with the perimeter wall and extending within the interior

15           As discussed above in Section I, Halvorsen does not teach or suggest all the limitations set forth in the claims. More specifically, Halvorsen does not teach or suggest a dish drainer and tray set including at least one compartment formed contiguous with the perimeter wall and extending within the interior. Because Halvorsen does not teach or suggest all of the claim limitations, claims 2, 4 and 11 cannot be rendered obvious<sup>2</sup> by the teaching of Halvorsen.

**B. Claims 13-15 and 17**

20           Claims 13-15 and 17 have been rejected under 35 U.S.C. §103(a) as obvious over Halvorsen in view of Todd. Applicants respectfully traverse the rejection based on the following grounds.

          Claims 13-15 and 17 recite, *inter alia*, a combination dish drainer, tray set and package including a first compartment formed contiguous with at least one of the walls and extending within the interior and a

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<sup>2</sup> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

second compartment formed contiguous with at least one of the walls and extending within the interior.

Neither Halvorsen, as discussed above in Section I, nor Todd, taken alone or in combination, teach or suggest all the limitations set forth in the claims. More specifically, the cited references do not teach or suggest a combination dish drainer, tray set and package including a first compartment formed contiguous with at least one of the walls and extending within the interior, much less a second compartment formed contiguous with at least one of the walls and extending within the interior. The deficiencies in Halvorsen are discussed above. Todd simply discloses a modular wire rack 155 onto which small fragile items may be secured for shipment, in a package 180, and eventual display. Todd fails to disclose or suggest the same limitations that are missing from Halvorsen.

Because the cited references do not teach or suggest the claimed limitations, whether taken alone or in combination with any teachings known in the art, claims 13-15 and 17 are not rendered obvious.

**C. Claims 18 and 19**

Claims 18 and 19 have been rejected under 35 U.S.C. §103(a) as obvious over Halvorsen in view of Kaufman et al. Applicants respectfully traverse the rejection based on the following grounds.

Claims 18 and 19 recite, *inter alia*, a combination dish drainer, tray set and package including a first compartment formed contiguous with at least one of the walls and extending within the interior and a second compartment formed contiguous with at least one of the walls and extending within the interior.

Neither Halvorsen, as discussed above in Section I, nor Kaufman et al., taken alone or in combination, teach or suggest all the limitations set forth in the claims. Again, the deficiencies of Halvorsen are discussed above. Kaufman et al. simply discloses a packaging case having an elevating mechanism, the packaging case including plastic sheeting 52 to

form the covers 54 and 56. Kaufman et al. fails to disclose or suggest the same limitations that are missing from Halvorsen. Because the cited references do not teach or suggest the claimed limitations, whether taken alone or in combination with any teachings known in the art, claims 18  
5 and 19 cannot be rendered obvious thereby.

### III. NEW CLAIM 20

New independent claim 20 recites, *inter alia*, a dish drainer and tray set including a separate and discrete tray having a footprint larger than the base of the dish drainer when the tray is in a first deployed  
10 configuration, *the discrete tray being positionable substantially beneath the base of the dish drainer and capable of collecting and redirecting water from the dish drainer.*

Neither Halvorsen, Kaufman et al., nor Todd disclose or suggest that it would be desirable to provide a tray positionable substantially  
15 beneath the base of the dish drainer and capable of collecting and redirecting water from the dish drainer. In fact, the tray of Halvorsen is simply a support ring which is incapable of collecting and redirecting water from the colander, and Kaufman et al. and Todd do not disclose a tray of any kind. Because the cited references do not teach or suggest  
20 the claimed limitations, whether taken alone or in combination with any teachings known in the art, claim 20 cannot be anticipated or rendered obvious thereby.

IV. CONCLUSION

For these foregoing reasons, applicants believe the application to be in condition for allowance. If there are any additional fees or refunds, the Commissioner is hereby directed to charge or debit Deposit Account No.

5 13-2855. Reconsideration and withdrawal of the rejections is respectfully requested.


Respectfully submitted for,

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March 10, 2003

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